

ESTTA Tracking number: **ESTTA85067**

Filing date: **06/13/2006**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91170763
Party	Plaintiff Rational Enterprises Limitada Rational Enterprises Limitada c/o Facio Abogados, 3rd FloorEl Patio Bldg, Plaza Roble Corporate Ctr Guachipelin Escazu, COSTA RICA
Correspondence Address	Anna W. Manville Arnold & Porter LLP 555 Twelfth Street, N.W. Washington, DC 20004-1206 UNITED STATES anna.manville@aporter.com,trademarkdocketing@aporter.com
Submission	Motion to Amend Pleading/Amended Pleading
Filer's Name	Roberta L. Horton
Filer's e-mail	trademarkdocketing@aporter.com, Roberta_Horton@aporter.com
Signature	/Roberta L. Horton/
Date	06/13/2006
Attachments	Amended NotOpp.pdf (6 pages)(306650 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In re Application Serial No. 78/330,274

Mark: POKER SUPERSTARS (as amended)

Published: April 11, 2006

_____)	
RATIONAL ENTERPRISES LIMITADA,)	
)	
Opposer,)	
)	
v.)	Opposition No.: 91170763
)	
HSOR, LLC,)	
)	
Applicant.)	
_____)	

AMENDED NOTICE OF OPPOSITION

Rational Enterprises Limitada, a corporation organized and existing under the laws of Costa Rica, having a business address at c/o Facio Abogados, 3rd Floor El Patio Building, Plaza Roble Corporate Centre Guachipelin Escazu, Costa Rica (hereinafter "Opposer"), believes that it will be damaged by registration of the mark shown in Application Serial No. 78/330,274, as amended, filed by HSOR, LLC (hereinafter "Applicant"), and hereby opposes same under Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d).

As grounds for opposition, Opposer alleges that:

A. Background

(i) Applicant's Applicant

1. Applicant seeks to register POKER SUPERSTARS as a mark for “poker tournaments” in Class 41.

2. The opposed Application Serial No. 78/330,274, now amended, was filed on November 19, 2003, based on an alleged *bona fide* intention to use the mark in commerce. At that time, Applicant sought to register the mark POKER SUPERSTARS INVITATIONAL CHAMPIONSHIPS.

3. Applicant has twice amended its application. It filed an amendment on April 14, 2005, seeking to change its mark to POKER SUPERSTARS CHAMPIONSHIP. It subsequently sought leave to amend its application to register the mark POKER SUPERSTARS.

4. The POKER SUPERSTARS application is currently based on use in commerce and the Applicant alleges a first use date of August 15, 2004.

(ii) Opposer's Mark

5. Opposer began using its POKERSTARS mark at least as early as May 31, 2001, and Opposer has continuously used the POKERSTARS mark in commerce in connection with gaming related goods and services. Through extensive promotion and use of the POKERSTARS mark, Opposer has built a strong national reputation for high quality goods and services offered under its POKERSTARS mark. Accordingly, Opposer's POKERSTARS mark has come to symbolize Opposer and its goods and services.

6. Opposer is the owner of U.S. Application Serial No. 78/542,627, for the mark POKERSTARS for “downloadable computer card game software and computer

gambling game software” in class 9 and “on-line entertainment in the nature of card games and gambling tournaments and competitions; casino on-line services featuring interactive multi-player card games and gambling; organization of and administration of card games and contests, interactive games of chance, on-line card games and gambling contests, and on-line games of chance for entertainment purposes; providing newsletters in the field of on-line and off-line gambling via email; providing information on-line related to internet gambling and computer games of chance” in class 41. Opposer’s application reflects a prior use date of May 2001, well before the alleged first use date claimed by Applicant.

B. Grounds for Opposition

(i) Likelihood of Confusion

7. On information and belief, the services offered by Applicant as set forth in Application Serial No. 78/330,274 are identical, or closely related to, those in connection with which Opposer has used and is using its POKERSTARS mark.

8. On information and belief, Applicant’s services are offered to the same class of consumers who purchase the goods and services in connection with which Opposer has used and now uses its POKERSTARS mark.

9. Opposer’s rights in its POKERSTARS mark predate the filing date of Application Serial No. 78/330,274, and on information and belief, Opposer’s rights in its POKERSTARS mark predate any rights upon which the Applicant can rely.

10. The Applicant’s applied-for mark POKER SUPERSTARS is similar to Opposer’s POKERSTARS mark in sight, sound and meaning, such that if Applicant’s mark is used in connection with the services identified in Application Serial No.

78/330,274, it would be likely to cause confusion, mistake, or deception in the relevant trade and public, all to Opposer's damage.

11. Potential customers for Applicant's services are likely to believe that such services originate with or are sponsored or approved by Opposer, when in fact they are not, resulting in damage to Opposer.

12. Application Serial No. 78/330,274 has been cited against Opposer's pending Application Serial No. 78/542,627 as a potential bar to registration causing further damage to Opposer.

13. If Applicant is granted the registration herein opposed, it would obtain a *prima facie* exclusive right to use the applied-for mark, which would be a further source of damage to Opposer.

(ii) Material Alterations

14. Applicant has twice amended its proposed mark, once from POKER SUPERSTARS INVITATIONAL CHAMPIONSHIPS to POKER SUPERSTARS CHAMPIONSHIP, and again from POKER SUPERSTARS CHAMPIONSHIP to POKER SUPERSTARS. These amendments represent material alterations within the meaning of Rule 2,72 of the Trademark Rules of Practice and Section 807.14 of the Trademark Manual of Examining Procedure. See, e.g., *In re Who? Vision Systems, Inc.*, 57 USPQ2d 1211 (TTAB 2000) (proposed amendment from TACILESENSE to TACTILESENSE -- adding just one letter -- found to be material alteration).

15. The twice-amended mark, POKER SUPERSTARS, does not create the same commercial impression as the mark that was the subject of the original application,

POKER SUPERSTARS INVITATIONAL CHAMPIONSHIPS. The former refers to persons, the latter, to a tournament or round of games.

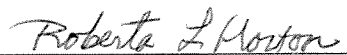
16. Because Applicant has twice sought to make material alterations to its mark, it is not entitled to seek registration of POKER SUPERSTARS in this Application Serial No. 78/330,274. In addition, for the reasons set forth in Paragraphs 10-13 above, Opposer would be damaged by such material alterations, should the POKER SUPERSTARS application improperly proceed to registration.

WHEREFORE, Opposer requests that this Opposition be sustained, that Application Serial No. 78/330,274 be rejected, and the applied-for mark be refused registration. Please charge any fee that may be due or credit any overpayment to Deposit Account No. 50-2387.

Respectfully submitted,

RATIONAL ENTERPRISES
LIMITADA

By Its Attorneys



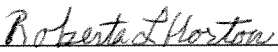
Anna W. Manville
Roberta L. Horton
Catherine Rowland
Arnold & Porter LLP
555 Twelfth Street, N.W.
Washington, DC 20004
(202) 942-5000
Attorneys for Applicant

Dated: June 13, 2006

CERTIFICATE OF SERVICE

This is to certify that on the 13th day of June, 2006, a true and correct copy of the foregoing AMENDED NOTICE OF OPPOSITION was served by first-class mail, postage prepaid and Federal Express, upon:

ALAN M. SACK
HOFFMANN & BARON, LLP
6900 JERICHO TURNPIKE
SYOSSET NY 11791



Roberta L. Horton